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OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR PANEL REHEARING

No. 08-1091

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

MRS. JOHNNIE L. BROWN,
PETITIONER

V.

JOHN E. POTTER, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE

PETITIONER, JOHNNIE L. BROWN
PETITION FOR REHEARING

Mrs. Johnnie L. Brown

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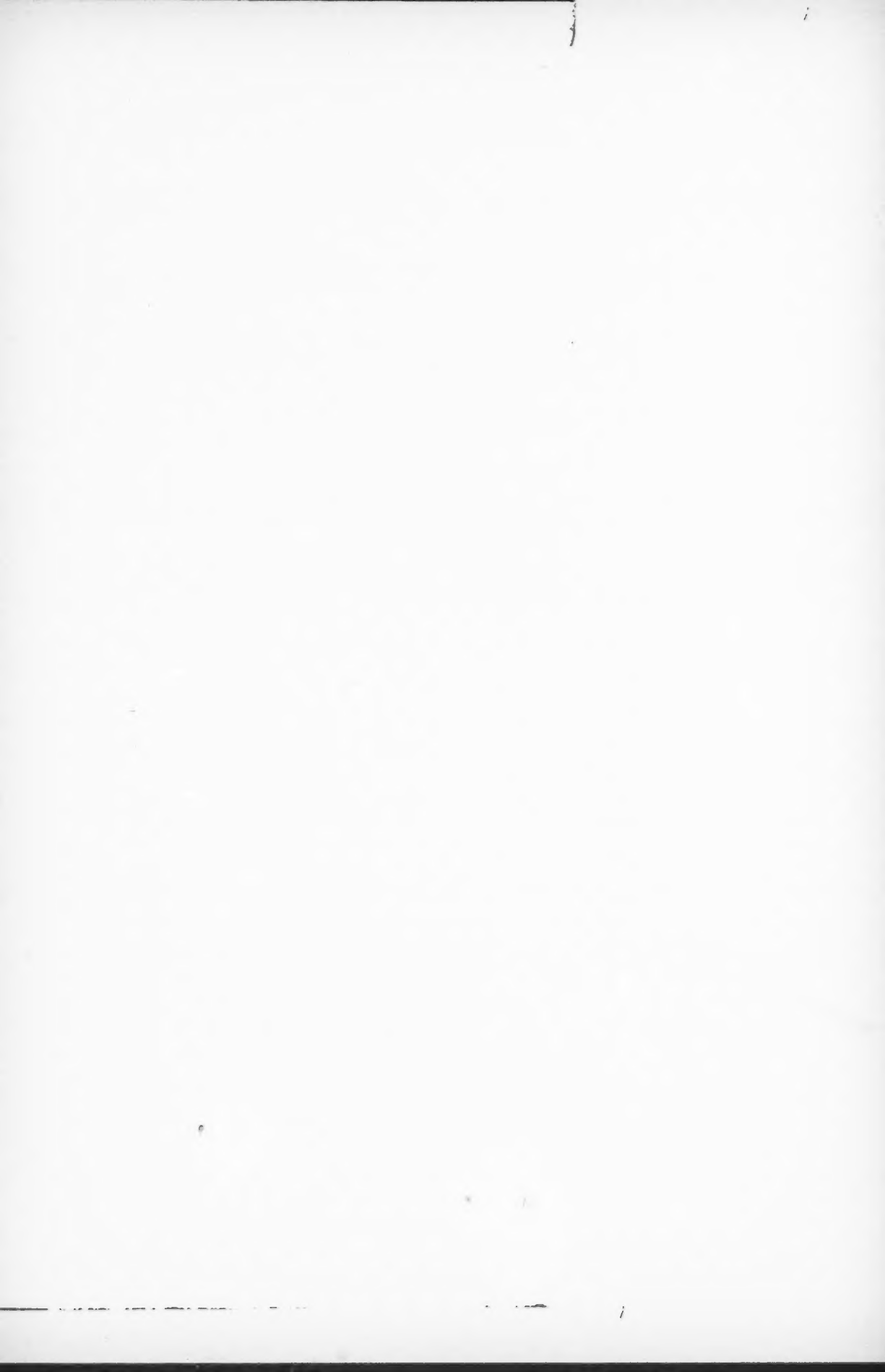


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CERTIFICATE OF GROUNDS FOR REHEARING
No.08-1091

This petition for rehearing of the order denying a petition for a writ of certiorari is presented in good faith and not for delay. A copy of the panel decision is attached to this petition. I express a belief based on my knowledge of the facts in this case. Specifically, the Court overlooked an important question of Federal Law, that has not been, but should be settled by this Court. Did the Respondents violate Petitioner's Constitutional Rights? Yes. Petitioner's Constitutional Rights was violated, due to the Respondent's disregards for the Federal laws, prohibiting discrimination in employment.

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including: firing, compensation, fringe benefits; pay etc.

Discriminatory practices under these laws also include: harassment on the basis of race, color, religion, sex, religion, national origin, disability or age; and retaliation against an individual for filing a charge of discrimination.

It is unlawful to discriminate against Petitioner on the Basis of Sex and Retaliation under title VII of the Civil Rights Act, 42 U.S.C. 631 et. and Age Discrimination in Employment Act ("AREA"), 29 U.S.C.63 1 et seq. The Respondents violated Petitioner's Constitutional Rights by discriminating against her due to her age and retaliation.

Title VII of the Civil Rights Act of 1964 prohibits discrimination due to sex, 41.36, disability and medical condition, national origin, race, color religion, physical disability, mental disability, also (FEDA). The Respondents violated Petitioner's Constitutional Rights by their discrimination due to her sex, and mental and physical disabilities.

In Addition, Petitioner's Constitutional Rights were violated when she was not allowed to continue her employment to the full extent. Petitioner was subjected to continued harassment, disparate treatment and a hostile work environment, and through the Respondents discriminatory acts of abuse, Petitioner was forced into involuntary retirement., which constitutes a constructive discharge.

Petitioner's Constitutional Rights were violated when she was not allowed to utilize the number of employees to get her job done as

the other supervisors. When she was forced to work short.

Petitioner's Constitutional Rights were violated when she was forced to help the employees work in addition to performing her supervisory duties in an effort to avoid being removed from the Postal Service, and the other younger male and female supervisors were favored over her.

Petitioner's Constitutional Rights were violated when the Respondents refused to accommodate Petitioner in regards to her disability, by allowing Arlene Colbert to work on a light duty assignment and Petitioner's request was denied. The (ADA) of 1990 and Section 503 and 504 of the Rehabilitation Act of 1973 and Title 42 U.S. Code 1981, prohibit discrimination due to Petitioner's disability.

The ADA and the Rehabilitation Act defines, is similar but not identical, the protected category of an "individual with disability." The ADA defines "individuals with disabilities," and the Rehabilitation Act defines an "individual with disability" (labeled in the original version of the Act as an "individual with handicaps"), as including any individual who: 1. Has a physical or mental impairment that substantially limits one or more of such person's major life activities; 2. Has a record of such an impairment; or 3.

Is regarded as having such an impairment. In applying this definition, three questions must be generally be analyzed: (1) is there an impairment?: (2) does the impairment affect a major life activity?; and (3) does this effect rise to a substantial limitation? Petitioner's mental and physical disabilities can be applied to this definition.

Petitioner's Constitutional Rights were violated when she was forced to work in a hostile work environment from 1992 to 1999, and their discriminatory abuse did in fact cause Petitioner's total mental and physical disability. Petitioner is continuing to experience the disassociation episodes, the latest episode was on April 1, 2009 when she had an encounter with a woman, she made several embarrassing statements and was unable to eat or sleep for two days, until she contacted the person to apologize . Also, for the aforementioned reason. Petitioner is unable to hold a job and she is fearful of being in any social gatherings.

Petitioner's Constitutional Rights were violated when her Merit Increase and Bonus Pay was denied. And all other supervisors in her unit was given their merit increase and Bonus pay, except for Francis Webb who had been off for ten years.

Petitioner's Constitutional Rights were violated when she was forced to work sacks of mail only, while Supervisor, Louis Buckingham and Supervisor Arlene Colbert were not forced to work sacks of mail only.

Petitioner's Constitutional Rights were violated through the Respondent's continued discriminatory acts and abuse has caused Petitioner's physical and mental impairment that limits one or more of her major life activities.

According to the ADA regulations , physical impairment includes, any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs) cardiovascular, reproductive, digestive genito-urinary, heroic and lymphatic, skin and endocrine. A mental impairment includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Petitioner's major life activities continues to become more substantially limited on a daily basis.

These cases are a casual link between Petitioner's case. *Head v. Glacier Nw., Inc.* 413 F3d 1053, 1060, 16 AD 1606 (9th Cir. 2005) ("interacting with others is a major life activity") *Jacques v. DiMarzio*, 386 F.3d 192, 200 (2d Cir. 2004) ("interacting with others is a major life activity under the ADA"); *Ray v. Kroger Co.*, 264 F. Supp 2d 1221, 1226, (S.D. Ga.) aff.'d 90 Fed Appx. 384 (11t Cir. 2003).

Petitioner's mental impairment is substantially limited in regards to interacting with other, because her disassociation episodes has continue from 1999 to present.

STATEMENT OF FACTS

No. 08-1091

On March 30, 2009, this court issued its decision in this case, attached to this petition. For the reasons stated above Petitioner is requesting that a Rehearing be granted. Petitioner's Attorney, John L. Taylor's fee for representation of Petitioner was \$20,000.00. Petitioner did not have the funds available.

ARGUMENT

It is clear that Petitioner's Constitutional Right has been violated due to the Respondents continued disregard for Federal laws prohibiting Discrimination in employment.

The Respondent's violation of Petitioner's Constitutional Rights, forced her into involuntary retirement, causing her to loose her job in 1999, and she can never be gainfully employed again. Also, The Supreme Court has stated that the word major means important, but that major life activities are not limited to those aspects of a person's life that have a public, economic, or daily character. See: *Bragdon v Abbott*, 524 U.S. 624, 638-39, (1998)

The EEOC regulations gives us examples of major life activities, caring for oneself, performing manual tasks, walking, seeing, hearing speaking, breathing , sleeping, eating, drinking, toileting, controlling one's bowels, waste elimination, learning and working. This list is illustrated and not exclusive. EEOC guidelines also lists sitting, standing, lifting, reaching, as well as mental and emotional processes such as thinking, concentrating, interacting with others, and reading and writing. In addition to those examples given by the EEOC, case law is largely consistent in finding the following to be major live activities under ADA: caring for oneself, bathing and dressing. Petitioner is substantially limited to one or more of her life activities.

The following information are examples of how Petitioner's mental and physical impairments substantially limits Petitioner's life activities. Caring for oneself, it is difficult at times for Petitioner to care for herself. Example, cooking, many days and nights she will go to bed without eating because she lacks the energy to prepare her food. Petitioner, has difficult performing manual tasks such as, house

cleaning, washing, ironing etc. She often get assistance every two weeks to perform those tasks. Petitioner has difficulty walking and running outside of her home. Prior to Petitioner's mental and physical impairments she would go for a walk in connection with some running for at two miles on a daily basis. She has difficulty seeing hearing and breathing at times. Breathing, many times Petitioner has difficulty breathing when her stress level has increased due to every day problems. She has feelings of choking when eating and drinking at times.

Doe v. County of Centre, 242 F.3d 437, 447 (3d Cir. 2001) decided under Title R. *Toyota Motor Mfg.*, 534 U.S. at 197, (stating that major life activities include "such basic abilities as walking, seeing and hearing).

Petitioner has difficulty sleeping, many times she continues to stay awake through the night. Petitioner has difficulty eating and drinking. She is required to choose very carefully the kind of food that she eat, the food often will not digest. Also, Petitioner has a problem when drinking water or other liquids. Petitioner often vomits rather than digesting her food. Toileting, Petitioner's irritable bowel syndrome has substantially limited the major life activity of bowel control. See *Workman v. Frito-Lay, Inc.* 165 F.3d 460, 8 AD 1761 (6th Cir. 1999). (waste elimination, processing and cleaning one's own blood and eliminating body waste is a major life activity under A. Petitioner's learning and work life activities is totally limited because she will never be able to hold a job and her learning is affected due to her being unable to concentrate. Also, see *Amir v. St. Louis Univ.* 184 F.3d 1017, 1027, (8th Cir. 1999); *Phillips v. Wal-Mart Stores Inc.* 78 F. Supp. 2d 1274, 1282 (S.D. Ala. 1999).

Petitioner also, has difficulty sitting and standing for long periods of time. When Petitioner prepare her meals for herself she is required to rotate between sitting and standing, she must sit for breaks in order to prepare a meal for herself. Lifting and reaching, Petitioner is unable to do no heavy lifting, and when she reaches to high she often get dizzy and she might fall. Petitioner needs extra time for thinking, when speaking or interacting in public, she is required to prepare her speech ahead of time, otherwise she will get confused and will be unable to continue speaking.

Petitioner has difficulty concentrating, when she is talking she often loose her thought in the middle of the conversation. Peti-

tioner has difficulty bathing and dressing, many times she will go without bathing and dressing for several days, because she lacks the energy to get out of bed, and the long length of time that it takes to bath and dress irritates petitioner.

These cases are a casual link between Petitioner's case. *Forest City*, 175 F.3d at 151; see also, *Schwertfager*, 42 F Supp. 2d at 1359. (finding dressing oneself to be a major life activity, but finding no substantial limitations); *McKey v. Occidental Chem. Corp.* 956 F. Supp. 1313, 1318 (S.D. Tex 1997).

In addition, Petitioner's Constitutional Rights were violated by the Respondents because the following list of major life activities, such as eating, sleeping, drinking, sitting, and performing manual tasks that are central to daily life has been substantially impaired by the Respondents' disregard for the Federal Laws and their continued discriminatory abuse to Petitioner for almost a decade. *Coghlan v. H.J. Heinz Co.*, 851 F. Supp. 808, 814 (N.D. Tex 1994) see also EEOC Enforcement Guidance on Americans with Disabilities Act and Psychiatric Disabilities, No. 915.002 (march 25, 1997). See *Fraser*, 342 F.3d at 1039-40; *Waldrip v General Elec. Co.*, 325 F.3d 652, 655 (5th Cir. 2003).

Petitioner's Constitutional Rights were violated when the Respondents unlawfully discriminated against on the bases of Sex and Retaliation Under the Title VII of the Civil Rights Act, 42 U.S.C., 631 & the Age Discrimination under ADEA 29 U.S.C., 631 et seq.

The Respondents discriminated against Petitioner due to her age, when supervisor, Buckingham (DOB) 09-02-48 and Francis Webb (DOB) 12-22-51), was allowed to change their Scheduled Days Off and Petitioner's request was denied. Petitioner's Constitutional Rights were violated when the Respondents discriminated against her due to her sex when the younger male supervisors, Joe Perkins and Louis Buckingham was treated more favorably than Petitioner, when they were allowed to utilize more employees to get their job done. The Respondents violated Petitioner's Constitutional Rights when they retaliated against Petitioner for EEO activity by forcing her to work short, and by continuing to instruct her to work sacks of mail only. Section 704 of Title VII prohibits retaliation against an employee for opposing unlawful discrimination. *McGinnest v GTE Serv. Corp.* 360 F.3d 1103, 1124, (9th Cir. 2004) citing 42 U.S.C. 200-e3(a).

Petitioner's Constitutional Rights were violated when she was subjected to continued harassment, disparate treatment and a hostile work environment, and by the Respondents discriminatory acts and abuse, petitioner was forced into involuntary retirement, which constitutes a constructive discharge. Also, due to the Respondents disregard to Federal Law, Petitioner's working conditions caused her life to become a living hell and her health deteriorated, forcing her into involuntary retirement.

City of Moorpark v. Supreme Court (1998) 18 Cal. 4th Cir. 1143, 11161, 77 Cal Rptr., 2d 445, 959, p.2d 752.

Petitioner's Constitutional Rights were violated when the Respondents forced her to work under a hostile environment, from 1992-1999 and the emotional distress caused by Petitioner's working conditions resulted in Petitioner's total mental and physical disabilities. The facts in this case is similar to the case of *Schmidt v. Safeway Inc.* M. Or. 1994) 864 F. Supp. 991, 997. *Faust v. California Portland Cement Co.* (2007) 150 Cal. App. 4th 824, 887, 58 Cal. Rptr..3d 729.

Petitioner's Constitutional Rights were violated when the Respondents refused to accommodate Petitioner in regards to her mental disabilities, when Sr. MDO. Mr. Nathan Griffin would not allow Petitioner to work on a light duty assignment, while he approved Supervisor, Arlene Colbert's request and he allowed her to work on a light duty assignment.

Petitioner's Constitutional Rights were violated when the Respondents denied Petitioner's merit increase and EVA pay, by using a letter of warning for an accident, which did not relate to Petitioner's performance, Title VII of the Civil Rights act of 1964 prohibits retaliation against and individual for filing a charge of discrimination.

In regards to the major life activity of thinking & reading:

See *Head*, 413 F3d at 1061, *Shaver v. Independent Stave Co.*, 350F.3d 716, 720-721 (8th Cir. 2003); *Nawrot v. CPC, Int'l*, 277 F.3d 896, 306, 903, 905,(7th Cir. 2002). In regards the major life activity of learning: *Bercovitch v. Baldwin Sch., Inc.* 133 F3d 141, 155 (1st Cir. 1998) (educational claim under the Rehabilitation Act) 113 F. Supp. 2d at 1329. In regards to the major life activity of concentrating: See, *Gagliardo v. Connaught Labs., Inc.* 311 F .3d 565, 569, (3rd Cir. 2002) (suggesting that concentrating and remembering may be a part of the more general activity of "cognitive functions").

The Supreme Court has suggested that manning may be a

major life activity, *Sutton v. United Air Lines, Inc.* 527, 488, 9 AD 673 (1999) ("one has a disability, if notwithstanding the use of corrective device, that individual is substantially limited in major life activity. For example, individuals who use prosthetic limbs or wheel-chairs may be mobile and capable of functioning in society but still be disable because of a substantial limitation on their ability to walk or run. Petitioner's physical and mental Impairments has substantially limited her ability to r uz, since she walked and sometimes ran prior to her disability.

In addition, most of the major life activities that are central to Petitioner's daily life has been substantially impaired due to the Respondents' disregard to Federal laws.

CONCLUSION

The Petition for Panel Rehearing should be granted.
Respectfully Submitted.

s/
Mrs. Johnnie L. Brown,
Petitioner
4851 Walnut Street
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April 24, 2009